IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NOS. 87 AND 88 OF 2003.

CRIMINAL MISCELLANEOUS APPLICATION NO. 87 OF 2003.

Mr. Anthony Ramos,
r/at 7/156, Sauntavaddo,
Calangute-Goa. ... Applicant.

Versus

State through Officer-in-Charge,
Police Station, Anjuna-Goa. ... Respondent.

CRIMINAL MISCELLANEOUS APPLICATION NO. 88 OF 2003.

Mr. Cosme Carrasco,
r/at 7/156, Sauntavaddo,
Calangute-Goa. ... Applicant.

Versus

State through Officer-in-Charge,
Police Station, Anjuna-Goa. ... Respondent.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for the Applicants in both Applications.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent State in both Applications.

Coram : P.V. HARDAS, J.

Date : 2nd May 2003.

ORAL ORDER.

Both these applications, filed by the accused arise in the same crime and, therefore, are being decided by a common Order.

2. The applicant in Criminal Miscellaneous Application No. 87 of 2003 is the owner of one fibre glass canoe, which was used primarily to take tourists

for a pleasure ride from Baga to Anjuna and back and was also used for Dolphin trips. The applicant in Criminal Miscellaneous Application 87 of 2003, according to him, had handed over the said canoe to his cousin, that is, the applicant in Criminal Miscellaneous Application No. 88 of 2003.

3. The applicant in Criminal Miscellaneous Application No. 88 of 2003 Cosme Carrasco, had in turn handed it over to two persons, namely, Govind Rathod and one Chandru, for plying the said fibre glass canoe on commission basis.

4. It appears that on 15th April 2003, at about 5.30 p.m., the said fibre glass canoe, which was being operated by the said two persons, namely, Govind Rathod and Chandru, capsized because of overloading and as a result, 9 tourists are said to have lost their lives. The police, accordingly, have registered Crime No. 28 of 2003 for an offence punishable under Section 304 of the Indian Penal Code. Admittedly, even according to the prosecution, the present applicants were not present in the canoe when it had capsized.

5. The State has filed a reply opposing the grant of anticipatory bail on the ground that custodial interrogation of the applicants is necessary for (1)

tracing the two absconding accused, namely, Govind Rathod and Chandru, (2) for ascertaining whether the applicants have obtained appropriate certificate/N.O.C. issued by the Ministry of Surface Transport, Mercantile Marine Department, Marmagoa, the Director of Tourism, Director of Fisheries/Captain of Ports and (3) the motor installed on the canoe is yet to be recovered.

6. The applicants had filed applications for anticipatory bail, which came to be rejected by the Additional Sessions Judge, Panaji, by Order, dated 22nd April 2003, on the ground that the material, prima facie, disclosed the involvement of the present applicants. Admittedly, even according to the prosecution, the canoe had capsized because of overloading of the tourist beyond the capacity of the canoe. Admittedly also, according to the prosecution, the present applicants were not present in the canoe.

7. Mr. Nadkarni, the learned senior counsel appearing on behalf of the applicants, has urged before me that an offence under Section 304 of Indian Penal Code cannot be said to have been made out against the present applicants. The death of 9 tourists is as a result of the canoe capsizing because of overloading of the tourist beyond the capacity of the canoe. The applicants cannot be attributed with the knowledge of

the act of overloading of the tourist beyond the capacity of the canoe, which was done by Govind Rathod and Chandru, when admittedly, none of the applicants was present in the canoe and the prosecution does not attribute any knowledge of overloading of the canoe by Govind Rathod and Chandru. In such circumstances, according to the learned counsel for the applicants, the applicants cannot be held vicariously liable alongwith Govind Rathod and Chandru. Mr. Nadkarni has stated that the applicants are permanent residents of Goa and there is no likelihood of the applicants absconding, if released on bail.

8. I have heard the learned Public Prosecutor on behalf of the State and, according to me, prima facie, the material on record does not establish the involvement of the present applicants in the crime. Applicant Anthony Ramos is no doubt the owner of the canoe and applicant Cosme Carrasco is no doubt the person to whom the canoe was given for taking the tourist from Baga to Anjuna. Undisputedly both the applicants were not present when the canoe was overloaded beyond the capacity of the canoe by Govind Rathod and Chandru. The canoe, according to the prosecution, had capsized because of overloading of tourist beyond the capacity of the canoe. In such circumstances, therefore, according to me, the prima

facie involvement of the present applicants in the offence under Section 304 of the Indian Penal Code is not made out by the prosecution. Admittedly, also according to the prosecution, the said two persons, that is, Govind Rathod and Chandru are not stated to be relatives of the present applicants nor is there any allegations against the present applicants that they are harbouring the said two persons. Therefore, according to me, the plea of the prosecution for rejection of bail on the ground that custodial interrogation of the present applicants is necessary to know the whereabouts of Govind Rathod and Chandru, is misplaced. The learned counsel for the applicant Ramos has stated that he will produce the motor of the canoe to the police and in fact, the police could have attached the motor any time earlier.

9. According to me, therefore, since the involvement of the applicants cannot be spelt out from the material which is placed before me, I am inclined to allow the applications on the following terms and conditions:-

(1) In the event of the arrest of the applicants in Crime No. 28 of 2003 for an offence punishable under Section 304 of the Indian Penal Code, the applicants be released on bail on their furnishing

surety in the sum of Rs. 10,000/- each to the satisfaction of the Investigating Officer.

(2) The applicants shall report to the Anjuna Police Station every day between 9.00 a.m. to 11.00 a.m. for one week and thereafter shall report to the Anjuna Police Station once a week on every Monday between 9.00 a.m. to 11.00 a.m. till the filing of the charge-sheet. They shall make themselves available as and when called for, for the purpose of investigation.

(3) The applicants shall not leave the State of Goa without the prior permission of the Court assigned with deciding the trial.

(4) The applicants shall furnish their permanent residential address to the Investigating Officer and in case of change of address, the new address, accordingly, shall be intimated to the Investigating Officer.

10. On the above terms and conditions, the applications are allowed.

(P.V. HARDAS)
JUDGE.

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